



DEPARTMENT OF LABOR

Office of the Secretary of Labor

Notice of Final Determination Regarding the Proposed Revision of the List of Products

Requiring Federal Contractor Certification as to Forced or Indentured Child Labor Pursuant to Executive Order 13126

AGENCY: Bureau of International Labor Affairs

ACTION: Notice of Final Determination

SUMMARY: This notice announces a final determination that carpets from India will not be added to the List of Products Requiring Federal Contractor Certification as to Forced or Indentured Child Labor (EO List) required by Executive Order No. 13126 (“Prohibition of Acquisition of Products Produced by Forced or Indentured Child Labor”). The Departments of Labor, State, and Homeland Security (collectively, the Departments) proposed adding carpets from India to the EO List in a Notice of Initial Determination in the Federal Register on December 2, 2014. 79 FR 71448. After a thorough review of the information available and comments received, the Departments have determined that there is not sufficient evidence at this time establishing more than isolated incidents of forced or indentured child labor in the production of carpets in India. With this final determination, the current EO List remains in place. The list identifies products, by country of origin, which the Departments have a reasonable basis to believe might have been mined, produced, or manufactured by forced or indentured child labor. Under a final rule by the Federal Acquisition Regulatory Council, published January 18, 2001, which also implements Executive Order No. 13126, federal contractors who supply products on the EO List are required to certify, among other things, that they have made a good

faith effort to determine whether forced or indentured child labor was used to produce those products and that, on the basis of those efforts, the contractor is unaware of any such use of child labor. See 66 FR 5346, 5347; 48 CFR 22.1502(c).

SUPPLEMENTARY INFORMATION:

I. Initial Determination

On December 2, 2014, the Departments published a Notice of Initial Determination in the Federal Register proposing to add carpets from India to the List of Products Requiring Federal Contractor Certification as to Forced or Indentured Child Labor (EO List). 79 FR 71448. The Departments issued the initial determination because they had a reasonable basis to believe that there was forced or indentured child labor in the production of carpets from India in more than isolated incidents. This initial determination can be accessed on the Internet at <https://federalregister.gov/a/2014-27624>.

II. Public Comment Period

When the initial determination was issued, the public was invited to submit comments until January 30, 2015 on whether carpets from India should be added to the EO List, as well as any other issues related to the fair and effective implementation of Executive Order No. 13126. During the public comment period, three comments were submitted. Those comments are available for public viewing at <http://www.regulations.gov> (reference Docket ID No. DOL-2014-0004).

During this comment period, the comments received called into question whether all the criteria required for adding a good to the EO List had been met. One of the three comments was from the Carpet Export Promotion Council (CEPC), which opposed the addition of carpets from India to

the EO List. The CEPC's submission included a survey it had commissioned in 2104 on labor practices in the Indian carpet industry. Based on the findings of the survey, the CEPC stated that while there are cases of child labor, there is no evidence of forced child labor in the production or manufacture of this good. However, the CEPC survey methodology had sampling and questionnaire design limitations that affected its ability to capture forced labor or collect data on a representative sample of the carpet industry.

The two other comments received did not provide enough specificity on the conditions or prevalence of children's work in order to be able to make a final determination that forced or indentured child labor in India's carpet industry is occurring in more than isolated incidents. GoodWeave submitted a comment in support of including carpets produced in India on the EO List, along with two newspaper articles reporting two rescue operations during which children were removed from carpet production facilities where they were forced to work. However, GoodWeave's submission did not discuss the prevalence of forced child labor in carpet production; rather, it only discussed the prevalence of child labor within the industry. While the newspaper articles do discuss forced child labor, they do not demonstrate that forced child labor is prevalent in the industry.

Siddharth Kara, a Harvard University researcher and faculty member, also submitted a public comment in support of adding Indian carpets to the EO List. Kara cited the findings of his research study, which was one of the sources cited by the Departments in making their initial determination. Even though Kara's submission stated that his research found a significant prevalence of forced labor and child labor in India's carpet industry, neither the comment nor the

study itself specifically addresses the prevalence of forced child labor in the industry. While Kara clarified in a separate correspondence that all children categorized as engaged in child labor were in fact engaged in forced labor as defined by international standards, the Departments were not able to determine whether child labor victims discussed in Kara's research study were exposed to specific indicators of forced labor, as defined by international standards.

III. Gathering, Receipt, and Analysis of Additional Information

In light of the inconsistency in the information received during the initial public comment period, the Departments gathered and received twenty additional comments on forced child labor in India's carpet industry. The information gathered and received can be found at <http://www.regulations.gov> (reference Docket ID No. DOL-2014-0004).

This information received did not provide sufficient evidence that there are more than isolated incidents of forced child labor in India's carpet industry. Department of Labor (DOL) officials interviewed several international and Indian non-governmental organizations about forced child labor in the carpet industry following the initial determination, including during a visit to India in May 2015. While some of these entities stated that there is forced child labor in this industry, they were unable to provide specific information on the number of children involved. One stated that such practices occurred, but that the prevalence had decreased. However, this assessment was not based on a reliable data collection exercise and the commenter was not able to provide information about the prevalence of forced child labor that may remain in the sector.

DOL also collected several articles from local Indian newspapers reporting on the rescue of children from hidden carpet production facilities where they were making carpets and unable to

leave. While these newspaper articles provide evidence that forced child labor occurs in the production of carpets, they do not demonstrate that forced child labor is occurring in more than isolated incidents. These types of incidents have been reported infrequently in local newspapers, have involved a small number of children, and have been limited to one administrative district within India.

Following the initial determination and during the May 2015 trip to India, the Government of India and the CEPC submitted additional comments and met with DOL officials explaining why carpets produced in India should not be added to the EO List. The CEPC also submitted an additional study it had commissioned in 2015 in which children working in the carpet industry were interviewed. The study concluded that there were no instances of forced child labor among the children interviewed because there was no restriction on ability to leave employment, nor any underpayment of minimum wage. Based on the findings of this study, the CEPC maintained that there is no evidence of forced child labor in the production or manufacture of this good. However, the survey methodology of this study also had sampling and questionnaire design limitations that affected its ability to capture forced labor or collect data on a representative sample of the carpet industry.

During the trip to India, DOL officials also traveled to carpet production facilities with non-governmental organizations and to others that participate in a CEPC monitoring program. During those visits, the DOL officials observed industry practices and did not uncover any specific evidence of forced child labor in India's carpet industry.

IV. Extended Public Comment Period

On June 17, 2016, DOL reopened and extended the period for public comments until July 15, 2016, to allow the public to view and comment on all information submitted or gathered since the initial determination, and to comment generally on whether carpets from India should be added to the EO List. 81 FR 39714. DOL received one comment during the extended public comment period. The comment was submitted by the CEPC and explained why carpets from India should not be added to the EO List. The comment is available for public viewing at <http://www.regulations.gov> (reference Docket ID No. DOL-2014-0004).

V. Final Determination

The Departments have carefully reviewed, analyzed, and considered the evidence available in determining whether to add carpets from India to the EO List. In so doing, the Departments considered and weighed the factors identified in the Procedural Guidelines for the Maintenance of the List of Products Requiring Federal Contractor Certification as to Forced or Indentured Child Labor (available at <http://webapps.dol.gov/FederalRegister/PdfDisplay.aspx?DocId=18024>), including the nature of information presented, the source of information, the date of the information, the extent of corroboration of the information by appropriate sources, whether the information involved more than isolated incidents, and whether recent and credible efforts are being made to address forced or indentured child labor in the country and industry. 66 FR 5352. The Departments therefore conclude that the available evidence at this time does not meet the criteria required to add this product to the EO List. While there is evidence of forced child labor in the industry, there is not sufficient evidence at this time demonstrating that children are subject to forced labor in circumstances that represent more than isolated incidents. We will continue to monitor this

situation and gather information through our ongoing research process.

The initial determination, the extension of request for public comments, and the public comments can also be obtained from: Office of Child Labor, Forced Labor, and Human Trafficking (OCFT), Bureau of International Labor Affairs, Room S-5317, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, DC 20210; telephone: (202) 693-4843; fax: (202) 693-4830.

VI. Background

The first EO List was published on January 18, 2001. 66 FR 5353. The EO List was subsequently revised on July 20, 2010, 75 FR 42164; on May 31, 2011, 76 FR 31365; on April 3, 2012, 77 FR 20051; and on July 23, 2013, 78 FR 44158.

Executive Order 13126, which was published in the Federal Register on June 16, 1999, 64 FR 32383, declared that it was “the policy of the United States Government . . . that the executive agencies shall take appropriate actions to enforce the laws prohibiting the manufacture or importation of goods, wares, articles, and merchandise mined, produced or manufactured wholly or in part by forced or indentured child labor.” Pursuant to Executive Order 13126, and following public notice and comment, DOL published in the January 18, 2001, Federal Register a list of products, identified by their country of origin, that DOL, in consultation and cooperation with DOS and the Department of the Treasury (relevant responsibilities now within DHS), had a reasonable basis to believe might have been mined, produced or manufactured by forced or indentured child labor. 66 FR 5353.

Pursuant to Section 3 of Executive Order 13126, the Federal Acquisition Regulatory Council published a final rule in the Federal Register on January 18, 2001, providing, amongst other requirements, that federal contractors who supply products that appear on the EO List must certify to the contracting officer that the contractor, or, in the case of an incorporated contractor, a responsible official of the contractor, has made a good faith effort to determine whether forced or indentured child labor was used to mine, produce, or manufacture any product furnished under the contract and that, on the basis of those efforts, the contractor is unaware of any such use of child labor. 48 CFR Subpart 22.15.

DOL also published on January 18, 2001, “Procedural Guidelines for the Maintenance of the List of Products Requiring Federal Contractor Certification as to Forced or Indentured Child Labor” (“Procedural Guidelines”), which provide for maintaining, reviewing, and, as appropriate, revising the EO List. 66 FR 5351. The Procedural Guidelines provide that the EO List may be revised either through consideration of submissions by individuals or on the initiative of DOL, DOS and DHS. In either event, when proposing to revise the EO List, DOL must publish in the Federal Register a notice of initial determination, which includes any proposed alteration to the EO List. DOL, DOS and DHS consider all public comments prior to the publication of a final determination of a revised EO List.

III. Definitions

Under Section 6(c) of EO 13126:

“Forced or indentured child labor” means all work or service--

- (1) Exacted from any person under the age of 18 under the menace of any penalty for its nonperformance and for which the worker does not offer himself voluntarily; or
- (2) Performed by any person under the age of 18 pursuant to a contract the enforcement of which can be accomplished by process or penalties.

Signed at Washington, DC, this 22th day of September, 2016.

Carol Pier
Deputy Undersecretary for International Affairs.

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